

AMENDED IN SENATE MAY 28, 2013

AMENDED IN SENATE APRIL 23, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 716

Introduced by Senator Lara

February 22, 2013

An act to add Sections 2635.5, 2644, 2645, 2646, ~~and 2647~~, *and 2648* to, and to repeal and add Sections 2635, 2636, 2637, 2638, 2639, and 2643 of, the Penal Code, relating to inmates.

LEGISLATIVE COUNSEL'S DIGEST

SB 716, as amended, Lara. Inmates: civil rights.

Existing law requires the Department of Corrections and Rehabilitation to institute certain practices to prevent sexual violence and promote inmate and ward safety in the Department of Corrections and Rehabilitation.

This bill would require the ~~department~~, *department* and all local corrections agencies ~~and departments statewide, and all private corrections companies; city, county, city and county, and regional juvenile justice facilities; police lockups; and all private confinement companies, as defined~~, to create a safe environment free from sexual abuse for inmates or arrestees, including those inmates or arrestees subject to a United States Immigration and Customs Enforcement hold, by adopting policies and procedures ~~equivalent to or stronger than implementing~~ specified federal regulations. The bill would require the entities to audit, on a 3-year cycle, all facilities operated by the agency, department, or company, as specified. The bill would require the ~~Attorney General~~ *Board of State and Community Corrections* to provide

means for members of the public to raise concrete and specific concerns about ~~the sufficiency~~ *material insufficiency* of the published policies or procedures and would require the ~~Attorney General~~ *board* to certify auditors, *create a standard audit report format*, and recommend or require the agency, department, or company to audit specified facilities when there is sufficient reason to believe that a pattern and practice of sexual abuse is occurring in the facility. *The bill would specify penalties for agencies, departments, and companies that are delinquent for or fail an audit.*

Because this bill would require a higher level of service from county and local correctional facilities, it would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2635 of the Penal Code is repealed.
- 2 SEC. 2. Section 2635 is added to the Penal Code, to read:
- 3 2635. The Department of Corrections and Rehabilitation, each
- 4 local corrections ~~agency~~; *agency*; *each city, county, city and county,*
- 5 *and regional juvenile justice agency; each city, county, city and*
- 6 *county, and regional police lockup; and each private ~~corrections~~*
- 7 *confinement* company shall create a safe environment free from
- 8 sexual abuse for inmates or arrestees, including those inmates or
- 9 arrestees subject to a United States Immigration and Customs
- 10 Enforcement hold, by adopting policies and procedures ~~equivalent~~
- 11 ~~to or stronger than those in the relevant sections of implementing~~
- 12 *the United States Department of Justice's National Standards to*
- 13 *Prevent, Detect, and Respond to Prison Rape.*
- 14 SEC. 3. Section 2635.5 is added to the Penal Code, to read:
- 15 2635.5. For purposes of this article, the following definitions
- 16 shall apply:

1 (a) “Board” shall mean the Board of State and Community
2 Corrections.

3 (b) “Detainee” means a person confined in a facility under
4 government authority, including arrestees, pretrial and post
5 conviction inmates, prisoners, minors in the juvenile justice system,
6 and federal detainees held in any city, county, city and county,
7 regional, or private facility.

8 (c) “Full implementation” means that every facility of an
9 agency, department, or company shall be compliant with all
10 material requirements of the policies and procedures produced
11 pursuant to this article. Full compliance may be achieved with de
12 minimus violations or discrete and temporary violations during
13 otherwise sustained periods of compliance.

14 (d) “Jail” means a confinement facility of a city, county, city
15 and county, or regional law enforcement agency that has, as its
16 primary use, the detention of persons pending adjudication of
17 criminal charges, persons committed to confinement for a
18 misdemeanor or pursuant to subdivision (h) of Section 1170,
19 persons adjudicated guilty who are awaiting transfer to a state
20 prison, or persons held under the authority of the federal
21 government.

22 (e) “Juvenile justice agency” means a city, county, city and
23 county, or regional government entity that confines juveniles
24 pursuant to the juvenile justice system, the criminal justice system,
25 or under the authority of the federal government.

26 (f) “Lockup” means a facility belonging to a state, county, or
27 local law enforcement agency for the temporary confinement of
28 individuals who have recently been arrested, detained, or are being
29 transferred to or from a court, jail, prison, or other agency.

30 (g) “Private confinement company” means a for-profit or
31 nonprofit company operating in the state that detains individuals,
32 or that manages a facility that detains individuals, on behalf of a
33 federal, city, county, city and county, or regional government.

34 ~~SEC. 3.~~

35 ~~SEC. 4.~~ Section 2636 of the Penal Code is repealed.

36 ~~SEC. 4.~~

37 ~~SEC. 5.~~ Section 2636 is added to the Penal Code, to read:

38 2636. The Department of *Corrections and Rehabilitation* and
39 each jail facility shall adopt and implement policies and procedures
40 ~~at least as strong as those detailed in~~ *consistent with the*

1 *requirements of Sections 115.5 to 115.86, inclusive, of Title 28 of*
2 *the Code of Federal Regulations for all facilities that house adult*
3 *inmates, including pretrial inmates and federal detainees. Adoption*
4 *of these policies or procedures shall take place no later than July*
5 *1, 2014. Full implementation of the policies or procedures shall*
6 *be completed no later than ~~January 1, 2016~~ July 1, 2015.*

7 ~~SEC. 5.~~

8 *SEC. 6.* Section 2637 of the Penal Code is repealed.

9 ~~SEC. 6.~~

10 *SEC. 7.* Section 2637 is added to the Penal Code, to read:

11 2637. Each ~~state or local~~ lockup shall adopt and implement
12 policies or procedures ~~at least as strong as those detailed in~~
13 *consistent with the requirements of* Sections 115.5, 115.6, and
14 115.111 to 115.186, inclusive, of Title 28 of the Code of Federal
15 Regulations. Adoption of these policies or procedures shall take
16 place no later than July 1, 2014. Full implementation of the policies
17 or procedures shall be completed no later than ~~January 1, 2016~~
18 *July 1, 2015.*

19 ~~SEC. 7.~~

20 *SEC. 8.* Section 2638 of the Penal Code is repealed.

21 ~~SEC. 8.~~

22 *SEC. 9.* Section 2638 is added to the Penal Code, to read:

23 2638. ~~State,~~ A state, county, and local juvenile justice ~~agencies~~
24 *agency* shall adopt and implement policies or procedures ~~at least~~
25 ~~as strong as those detailed in~~ *consistent with the requirements of*
26 Sections 115.5, 115.6, and 115.311 to 115.386, inclusive, of Title
27 28 of the Code of Federal Regulations. Adoption of these policies
28 or procedures shall take place no later than July 1, 2014. Full
29 implementation of the policies or procedures shall be completed
30 no later than ~~January 1, 2016~~ *July 1, 2015.*

31 ~~SEC. 9.~~

32 *SEC. 10.* Section 2639 of the Penal Code is repealed.

33 ~~SEC. 10.~~

34 *SEC. 11.* Section 2639 is added to the Penal Code, to read:

35 2639. (a) ~~Private corrections confinement~~ companies shall
36 adopt and implement the relevant policies or procedures from
37 Section 2636, 2637, or 2638. Adoption of these policies or
38 procedures shall take place no later than July 1, 2014. Full
39 implementation of the policies or procedures shall be completed
40 no later than ~~January 1, 2016~~ *July 1, 2015.*

1 ***(b) A private confinement company with a facility that only***
2 ***houses detainees under contract with the United States Department***
3 ***of Homeland Security is exempt from the requirements of***
4 ***subdivision (a).***

5 ~~SEC. 11.~~

6 SEC. 12. Section 2643 of the Penal Code is repealed.

7 ~~SEC. 12.~~

8 SEC. 13. Section 2643 is added to the Penal Code, to read:

9 2643. (a) On or before ~~January~~ July 1, 2015, the agency,
10 department, or company shall certify in writing to the ~~Attorney~~
11 ~~General~~ board that it has adopted policies or procedures as
12 mandated by Section 2636, 2637, 2638, or 2639 *and shall transmit*
13 *its policies and procedures electronically to the board.*

14 ~~(b) On or before July 1, 2014, every agency, department, or~~
15 ~~company shall make the mandated policies and procedures~~
16 ~~available to the public via its Internet Web site or other accessible~~
17 ~~means.~~

18 ***(b) The board shall, in a timely manner, make the policies and***
19 ***procedures of each agency, department, and company available***
20 ***to the public on an Internet Web site.***

21 ***(c) The ~~Attorney General~~ board shall provide a means for an***
22 ***interested member of the public to raise ~~concrete~~ substantial and***
23 ***specific concerns about the ~~sufficiency~~ material insufficiency of***
24 ***the published policies or procedures of any agency, department,***
25 ***or company. Upon receipt of these concerns from a member of the***
26 ***public, the ~~Attorney General~~ board shall have 90 days to review***
27 ***the relevant policies or procedures. ~~If the Attorney General finds~~***
28 ***deficiencies in the published policies or procedures of any agency,***
29 ***department, or company, the ~~Attorney General~~ shall suggest***
30 ***appropriate modifications to the agency, department, or company.***
31 ***Any concerns by the public shall be raised with the board before***
32 ***July 1, 2015.***

33 ***(d) On its own or in response to concerns raised by a member***
34 ***of the public, the board shall notify the agency, department, or***
35 ***company whose policies or procedures do not meet the***
36 ***requirements of Section 2636, 2637, 2638, or 2639 that it intends***
37 ***to reject the certification. This notice shall be in writing and shall***
38 ***include a specific recommendation for the manner in which the***
39 ***agency, department, or company may modify its policies or***
40 ***procedures to correct the deficiencies. An agency, department, or***

1 *company receiving this notification shall have 180 days from the*
2 *receipt of the written notice to adequately modify the policies and*
3 *procedures. If, after the 180-day period, the board finds that the*
4 *policies and procedures are still inadequate, the board shall reject*
5 *the certification.*

6 ~~SEC. 13.~~

7 *SEC. 14.* Section 2644 is added to the Penal Code, to read:

8 2644. (a) Audits of facilities governed by this article shall be
9 conducted on a three-year cycle. Beginning ~~January 1, 2016,~~ *July*
10 *1, 2015*, each agency, department, or company shall ensure that
11 each facility operated by the agency, department, or company is
12 audited at least once every three years. Any agency, department,
13 or company with three or more facilities shall ensure that ~~at least~~
14 *approximately* one-third of its facilities are audited each year of
15 an audit cycle.

16 (b) An audit conducted in compliance with Sections ~~115.400~~
17 *115.401* to 115.405, inclusive, of Title 28 of the Code of Federal
18 Regulations shall suffice for the purposes of this section. *For*
19 *private confinement companies with facilities that only house*
20 *detainees under contract with the United States Department of*
21 *Homeland Security, an audit conducted under Sections 115.401*
22 *to 115.405, inclusive, of Title 6 of the Code of Federal Regulations*
23 *shall suffice for the purposes of this section.*

24 (c) ~~The Attorney General board shall identify procedures, based~~
25 ~~on the principles found in~~ *publish audit procedures consistent with*
26 ~~the requirements of Sections 115.400~~ *Sections 115.401 to 115.405,*
27 *inclusive, of Title 28 of the Code of Federal Regulations;*
28 ~~Regulations that define all of the following:~~ *will govern all audits*
29 *required by subdivision (a). The board shall separately publish*
30 *audit procedures consistent with Sections 115.401 to 115.405,*
31 *inclusive, of Title 6 of the Code of Federal Regulations for private*
32 *confinement companies with facilities that only house detainees*
33 *under contract with the United States Department of Homeland*
34 *Security.*

35 ~~(1) The scope of an audit.~~

36 ~~(2) Auditor qualifications.~~

37 ~~(3) Audit contents and findings.~~

38 ~~(4) Audit corrective action plan.~~

39 ~~(5) Audit appeals.~~

(d) ~~The Attorney General board~~ shall also certify auditors, including, but not limited to, auditors who work directly with the board, and maintain a publicly available list of California-certified auditors. At its discretion, ~~the Attorney General board~~ may rely on an auditor's certification by the United States Department of Justice as evidence that the auditor is qualified to perform audits under this section. *For private confinement companies with facilities that only house detainees under contract with the United States Department of Homeland Security, the board may rely on an auditor's certification by the United States Department of Homeland Security as evidence that the auditor is qualified to perform audits under this section.*

(e) *The board shall produce a standard audit report format or identify an existing audit report format prior to July 1, 2015. An auditor shall, within 60 days of an audit or the completion of a corrective action plan, complete a written audit report for each facility audited using the standard report format. The auditor will forward the report to the Attorney General board, which shall maintain a database of facilities that have passed audits and those that have failed them make the reports available to the public on an Internet Web site.*

~~(f) An agency, department, or company shall make all audit reports public through its Internet Web site or by other publicly available means.~~

~~(g)~~
(f) Acting on its own or in response to ~~concrete~~ *substantial* and specific concerns from an individual, ~~the Attorney General board~~ may recommend or require an agency, department, or company to undergo an expedited audit for one or more of its facilities. The ~~Attorney General board~~ may only require an expedited audit when it has sufficient reason to believe that a pattern and practice of sexual abuse is occurring within a facility. An agency, department, or company shall be provided with a reasonable opportunity to respond to evidence before an expedited audit can be required. ~~The Attorney General board~~ shall identify a public means by which ~~the office board~~ can receive an individual's report of ~~concrete~~ *substantial* and specific concerns about a facility.

~~SEC. 14. Section 2646 is added to the Penal Code, to read:~~

~~2646. For purposes of this article, the following definitions shall apply:~~

1 (a) ~~“Jail” means any confinement facility of a federal, state, or~~
2 ~~local law enforcement agency whose primary use is to hold persons~~
3 ~~pending adjudication of criminal charges, persons committed to~~
4 ~~confinement after adjudication of criminal charges for sentences~~
5 ~~of one year or less, or persons adjudicated guilty who are awaiting~~
6 ~~transfer to a correctional facility.~~

7 (b) ~~“Juvenile justice agency” means a state, county, or local~~
8 ~~government agency with facilities primarily used for the~~
9 ~~confinement of juveniles pursuant to the juvenile justice system~~
10 ~~or criminal justice system.~~

11 (c) ~~“Lockup” means a state, county, and local law enforcement~~
12 ~~agency facility for the temporary confinement of individuals who~~
13 ~~have recently been arrested, detained, or are being transferred to~~
14 ~~or from a court, jail, prison, or other agency.~~

15 (d) ~~“Private corrections company” means a for-profit or~~
16 ~~nonprofit company operating in the State of California that confines~~
17 ~~individuals on behalf of a federal, state, county, or local~~
18 ~~government or that manages a facility that confines individuals on~~
19 ~~behalf of a federal, state, county, or local government.~~

20 SEC. 15. Section 2647 is added to the Penal Code, to read:

21 2647. (a) ~~The agency, department, or company shall collect~~
22 ~~accurate, uniform data for every allegation of sexual abuse using~~
23 ~~a standardized instrument and set of definitions.~~

24 (b) ~~The agency, department, or company shall aggregate the~~
25 ~~incident-based sexual abuse data at least annually.~~

26 (c) ~~The agency, department, or company shall annually review~~
27 ~~data collected and aggregated pursuant to this section in order to~~
28 ~~assess and improve the effectiveness of its sexual abuse prevention,~~
29 ~~detection, and response policies, practices, and training.~~

30 (d) ~~The agency, department, or company shall ensure that data~~
31 ~~collected pursuant to subdivision (a) are securely retained.~~

32 (e) ~~The agency, department, or company shall make all~~
33 ~~aggregated sexual abuse data readily available to the public, at~~
34 ~~least annually, through its Internet Web site or other publicly~~
35 ~~accessible means.~~

36 (f) ~~Before making aggregated sexual abuse data publicly~~
37 ~~available, the agency, department, or company shall remove all~~
38 ~~personal identifiers.~~

39 (g) ~~The agency, department, or company shall maintain sexual~~
40 ~~abuse data collected pursuant to subdivision (a) for at least 10~~

1 ~~years after the date of its initial collection unless federal, state, or~~
2 ~~local law requires otherwise.~~

3 *SEC. 15. Section 2645 is added to the Penal Code, to read:*

4 2645. (a) *The agency, department, or company shall collect*
5 *accurate, uniform data for every allegation of sexual abuse using*
6 *a standardized instrument and set of definitions.*

7 (b) *The agency, department, or company shall aggregate the*
8 *incident-based sexual abuse data at least annually.*

9 (c) *The agency, department, or company shall annually review*
10 *data collected and aggregated pursuant to subdivisions (a) and*
11 *(b) in order to assess and improve the effectiveness of its sexual*
12 *abuse prevention, detection, and response policies, practices, and*
13 *training.*

14 (d) *The agency, department, or company shall ensure that the*
15 *data collected pursuant to subdivision (a) are securely retained.*

16 (e) *The agency, department, or company shall make all*
17 *aggregated sexual abuse data readily available to the public at*
18 *least annually through its Internet Web site or other publicly*
19 *accessible means.*

20 (f) *Before making aggregated sexual abuse data publicly*
21 *available, the agency, department, or company shall remove all*
22 *personal identifiers.*

23 (g) *The agency, department, or company shall maintain sexual*
24 *abuse data collected pursuant to subdivision (a) for at least 10*
25 *years after the date of its initial collection, unless federal, state,*
26 *or local law requires otherwise.*

27 *SEC. 16. Section 2646 is added to the Penal Code, to read:*

28 2646. (a) *An agency or department with an existing contract*
29 *or agreement with a facility defined in subdivision (c) shall*
30 *probatively modify its contract or agreement to incorporate the*
31 *policies or procedures it adopts pursuant to Section 2636, 2637,*
32 *2638, or 2639. This modification shall be completed prior to the*
33 *submission of the certification required by Section 2643. If an*
34 *agency or department is involved in good faith negotiations to*
35 *modify a contract or agreement on the date the certification is*
36 *required to be submitted to the board, the agency or department*
37 *may still submit its certification along with a request for 60*
38 *additional days to complete the modification. At the end of those*
39 *60 days, the agency or department shall submit a supplemental*

1 *certification documenting the successful modification of the*
2 *contract or agreement or withdraw its certification.*

3 *(b) An agency or department that seeks to enter into a new*
4 *contract or agreement with a facility defined in subdivision (c)*
5 *after January 1, 2014, shall incorporate the policies and*
6 *procedures it adopts pursuant to Section 2636, 2637, 2638, or*
7 *2639 into that contract or agreement.*

8 *(c) For purposes of this section, “facility” means a city, county,*
9 *city and county, or regional agency or department that confines*
10 *individuals in a public or private facility not covered by Section*
11 *2636, 2637, 2638, or 2639. These facilities shall include, but are*
12 *not limited to, mental health facilities and out-of-state private*
13 *confinement companies.*

14 *SEC. 17. Section 2647 is added to the Penal Code, to read:*

15 *2647. (a) A city, county, city and county, or regional agency*
16 *or department that fails to provide the certification required by*
17 *Section 2643, has its certification rejected by the board, fails to*
18 *have its facility or facilities audited in a timely manner as required*
19 *by Section 2644, or has one or more facilities fail an audit after*
20 *being given an opportunity to correct any deficiencies will have*
21 *subsequent board-administered grant renewals or awards reduced*
22 *by 25 percent in the first year of noncompliance and by 50 percent*
23 *in the second year of noncompliance. An agency or department*
24 *that enters into a third year of noncompliance will be ineligible*
25 *for any board-administered grant renewals or awards until*
26 *compliance is achieved. An agency or department may show*
27 *compliance by providing a valid certification or by completing a*
28 *successful audit of a facility that is delinquent for or has failed an*
29 *audit.*

30 *(b) A private confinement company that fails to provide the*
31 *certification required by Section 2643, has its certification rejected*
32 *by the board, fails to have its facility or facilities audited in a*
33 *timely manner as required by Section 2644, or has one or more*
34 *facilities fail an audit after being given an opportunity to correct*
35 *any deficiencies will be assessed a five-hundred-dollar (\$500)*
36 *penalty on the first day the certification or audit is due or a failed*
37 *audit is reported to the board. The private confinement company*
38 *will be assessed an additional one-thousand-dollar (\$1,000)*
39 *penalty every seven days thereafter until it provides a valid*
40 *certification or completes successful audits of any facilities that*

1 *are delinquent for or have failed an audit. This penalty shall be*
2 *assessed and collected by the board.*

3 *SEC. 18. Section 2648 is added to the Penal Code, to read:*

4 *2648. The provisions of this article are severable. If any*
5 *provision of this article or its application is held invalid, that*
6 *invalidity shall not affect other provisions or applications that can*
7 *be given effect without the invalid provision or application.*

8 ~~SEC. 16.~~

9 *SEC. 19. If the Commission on State Mandates determines that*
10 *this act contains costs mandated by the state, reimbursement to*
11 *local agencies and school districts for those costs shall be made*
12 *pursuant to Part 7 (commencing with Section 17500) of Division*
13 *4 of Title 2 of the Government Code.*